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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,568	09/26/2003	Ofir Mazar	Ma-1	8831
25895	7590	09/01/2004	EXAMINER	
ROBERT L STONE PC 13 MEADOWLARK LN EAST BRUNSWICK, NJ 08816			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER

3751

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,568

Applicant(s)

MAZAR, OFIR

Examiner

Khoa D. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6 and 11-13, as presently understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Hodak (6618867).

Regarding claims 1 and 11, the Hodak reference discloses a swimming pool. The pool includes an upstanding sidewall (14,18,20,16) and a built-in thermometer (40). The thermometer includes a measuring portion (41) immersed in water and a scale portion (Fig. 5) located out of water. As schematically shown in Figure 4, the thermometer can be monitor by a person outside and above the pool.

All functional and intended use statements have been fully considered. They are, however, deemed not to impose any structural limitation distinguishable over the Hodak pool that is capable of being used as a bathtub for bathing purposes.

Regarding claim 2, the thermometer is mounted in recess (43) preformed in the wall.

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Regarding claim 3, the thermometer is releasably snap fit into the recess by using magnet (at 46).

Regarding claim 4, the thermometer is permanently mounted using adhesive (46).

Regarding claim 6, the thermometer is an angled thermometer (as shown in Figures 5 & 6, the thermometer is at a generally 90 degree angle with respect to element 18).

Regarding claims 12 and 13, the method as claimed would be inherent during the normal use and operation of the Hodak device.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 5, as presently understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Hodak in view of Parker (3965742).

The Hodak reference DIFFERS in that it does not specifically disclose that the thermometer is a digital thermometer as claimed. Attention, however, is directed to the Parker reference which discloses a digital thermometer (Figs. 1, 3, 4) which is desired to be used in a pool or other hydraulic environment. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Hodak reference by employing a digital

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thermometer, in view of the teaching of Parker, in order to facilitate a rapid read out of the temperature since digital thermometer provides numerical indicia.

5. Claim 7, as presently understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Hodak in view of Wolfgang (GB 2108838).

The Hodak reference DIFFERS in that it does not specifically disclose that the thermometer is mounted flush with the wall as claimed. Attention, however, is directed to the Wolfgang reference which discloses bath mat (1) having a thermometer (10) mounted flush with the surface of the mat. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Hodak reference by mounting a thermometer flush, in view of the teaching of Wolfgang, with the wall in order to prevent the thermometer from sustaining damage and also to protect the user from injury and disturbance.

6. Claims 1 and 8-10, as presently understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Lopes et al. (6578209) in view of Blaney (6105618).

Regarding claims 1 and 8, the Lopes et al. reference discloses a plastic-formed tub for bathing an infant. The tub includes an upstanding sidewall (about 26 in Fig. 5) and a built-in temperature indicator or thermometer (36). The thermometer includes first portion (38,46) contacted or immersed in water and a second portion (at 52) located out of water. The thermometer (36) is used to monitor the water temperature (col. 5, lines 6-8), before use, by a person (such as a mother giving bath to a baby) standing outside and above the bathtub.

The Lopes et al. reference DIFFERS in that it does not specifically disclose that the first portion is a measuring portion and the second portion a scale portion as claimed. Attention, however, is directed to the Blaney reference which discloses a plug (at 10) for a bathtub. The plug includes a measuring portion (13) and a scale portion (14) for indicating the temperature of the water. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Lopes et al. reference by employing a plug having a measuring portion and a scale portion, in view of the teaching of Blaney, in order to provide a warning to the user of the currently water temperature and therefore, possibly prevent accidental burning.

Regarding claims 9 and 10, the thermometer (36) is mounted flush in a recess (the not shown drain hole) preformed in the wall of the tub (Fig. 5)

Response to Amendment

7. Applicant's amendment, filed on 06/21/2004, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

8. Applicant's arguments filed on 06/21/2004 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that there is no suggestion or teaching in Hodak of a built-in thermometer built into the wall of the pool as claimed (see Remarks section, page 8). The examiner is respectfully traversed.

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As stated in the above rejection, Hodak teaches a pool including an upstanding sidewall (14,18,20,16) and a built-in thermometer (40). Even though element 16 is a "border" installed on the sidewall (14,18) and the liner (20), once the installation is completed, all of these elements (14,18,20,16) is considered an upstanding sidewall of the pool. And a built-in thermometer (40) is then mounted into the recess (43) preformed in the upstanding sidewall. Therefore, Hodak does teach a built-in thermometer built into the wall of the pool that is capable of being used as a bathtub for bathing purposes. The thermometer can be monitored by "a person" standing or kneeling on the edge of the pool which is "outside and above" the pool.

Applicant also asserts that the Hodak thermometer is not permanently mounted to the wall (see Remarks section, page 9). The examiner is respectfully traversed.

Applicant, in his arguments on page 9, indicates that the present invention thermometer "cannot be removed easily by a playing baby". Thus, it is reasonable to interpret the term "permanently mounted" means "cannot be removed easily by a playing baby". If that is the case, then the Hodak does teach a permanently mounted thermometer in a pool wall by using adhesive. Such adhesive is normally moisture resistant and tough (not easy) to be removed by a baby. Furthermore, applicant discloses, in the specification, page 5, that adhesive is used to secure the thermometer to the wall.

Applicant also points to the specification and argues that the Hodak does not teach an angled thermometer (see Remarks section, page 9, last full paragraph).

Although claims are interpreted in light of the specification, limitations from the

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specification are not read into the claim. In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, given the broadest interpretation, it is reasonable for the examiner to state that the thermometer is an angled thermometer as it is at a generally 90 degree angle with respect to element 18.

In short, Hodak as well as applicant's invention as claimed is directed to a thermometer for mounting to a sidewall of a bathing device. The fact that applicant's claimed invention is used "in a bathtub", such recitation does not render the withdrawal of Hodak because the cited Hodak reference does teach applicant's claimed invention that is the mounting of a thermometer on a sidewall of a bathing device for monitoring the water temperature as a safety precaution before use. And such teaching provides one skill in the art the extrinsic evidence to serve as a finding of inherency for a reference.

Applicant also asserts that there is no suggestion or teaching to combine the references, i.e. Lopes et al. and Blaney to arrive at applicant's invention as claimed. See the Remarks section, page 12.

The examiner recognizes that references cannot be arbitrarily combined and that there must be some reasons why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what

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they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

In this case, for instance, Lopes et al. does teach a plastic-formed baby's bathtub. The bathtub includes an upstanding sidewall (26 is part of the upstanding sidewall as schematically shown in Figs. 4 & 5) and a built-in temperature indicator or thermometer (36). The thermometer includes first portion (38,46) contacted or immersed in water and a second portion (at 52) located out of water (if the water is only partially filled). Furthermore, as stated above, the thermometer (36) is used to monitor the water temperature, before use, by a person outside and above the bathtub. The Lopes, therefore, discloses substantially all claimed features except for the claimed measuring and scale portions. Blaney is applied herein for the teaching of a measuring portion and a color changing or scale portion (color changing based on scale of colors to indicate the water temperature) used on a thermometer for indicating the water temperature. The examiner maintains that such modification, i.e. using a measuring portion and a color changing or scale portion is well within one of ordinary skill art to provide a warning indicator to the user of the currently water temperature and therefore, possibly prevent accidental burning.

Regarding the recitation "the thermometer is mounted flush with the wall", the portion (48) of the plug (36) is clearly mounted flush with the preformed drain hole (located about 26) which is part of the upstanding wall.

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Also Applicant's arguments with respect to claim 7 have been considered but are moot in view of the new ground of rejection under 35 U.S.C. 103(a) as being unpatentable over Hodak in view of Wolfgang (GB 2108838) as discussed above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

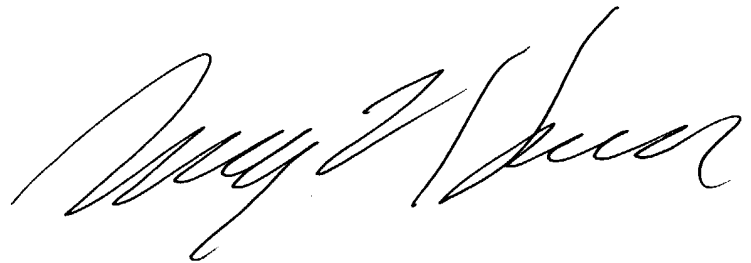
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (703) 306-5483. The examiner can normally be reached on M-F (7:00-4:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HK
08/28/2004

A handwritten signature in black ink, appearing to read "Gregory L. Huson", is written in a cursive style.

GREGORY L. HUSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700